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## Anti-aircraft Missiles and Gun Control

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**Abstract.** Gun control is a highly debatable topic both in the popular and scholarly media. But what about anti-aircraft missiles? Should they be banned? On the one hand, there are fewer of them around, so their challenge is more tractable. On the other hand, they can do far more damage than handguns. The present paper is an attempt to wrestle with this challenge.

**Keywords.** Gun control, Second amendment, Libertarianism, Anti-aircraft missiles.

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### 1. Introduction

What should be the libertarian view on anti-aircraft missiles? Are they covered by the second amendment? Should they be legal in the free society? The perspective of Murray Rothbard, Mr. Libertarian, is that any weapon that could be pinpointed to focus on criminals only, would be considered legitimate in the libertarian society. The target of these missile weapons can at least in principle be limited to malefactors. So, presumably, they would be allowed. But, with the use of anti-aircraft missiles criminals could blow up airplanes located five miles from an airport. Indeed, they could be used to interdict airplanes at any time during their flights. Does the libertarian philosophy, then, amount to a suicide pact, given the power of these weapons, and the great numbers of people who would wield them against innocents?

In section II we discuss some of the legal and constitutional ramifications of this challenge. Section III is given over to an analysis of the reality of this situation. We conclude in section IV.

### 2. Laws and constitutions

This second amendment question is complicated (Williams, 2013), and here is why. First: the question is not whether some use of weapons is covered by the second amendment. It is whether the federal government is authorized to prohibit it. I.e., it is more of a 10th amendment question than a second amendment one. There is no authority in the Constitution granted to Congress to outlaw any weapons, even nukes. So we never reach the second.

Plus, the Ninth Amendment says that the failure to enumerate a right in the first eight amendments cannot be construed to deny or disparage other rights. So *even if* the second amendment does not protect this right--- even if the second amendment did not exist—one may not use this fact<sup>1</sup> to argue that the right itself does not exist.

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The Constitution is very vague, more vague than most commentators appreciate, and the more one studies this document the more vague it becomes. The second, ninth and tenth amendments are the vaguest of them all. This allows the Constitution to be a “growing” manuscript, subject to the whims of the judges. Nowhere is this more the case than with regard to the interstate commerce clause. This grants to the feds practically unlimited power. None of this is really that objective--we are just using canons of statutory interpretation to interpret words emitted by various committees. There is not always an objective answer.<sup>2</sup> Given this, the libertarian view is that we should make arguments, when there is leeway, such that a more liberty-oriented interpretation of a given ambiguous constitutional or statutory provision, should be the one adopted, for reasons of justice.

Owning such a weapon as an anti aircraft missile is not in and of itself aggressive. We can easily imagine customary, contractual, etc. limitations arising in a free society, for the ownership of nuclear weapons. It's hard to imagine anti-aircraft missiles becoming practically banned by similar mechanisms.

One day not too far in the future the five mile limit will expand. We might well reach a point where anyone on the globe could have access to technology that could "knock down" a plane 17,000 miles away. So that means we would have to start imposing some kind of universal ban on such devices, knowledge and technology. This will ultimately be impractical anyway, so it is almost a moot question about whether we "should" outlaw it—not that this would be justified in any case.

One useful procedure is to ask whether the armament in question is something that has some peaceful uses, or not. For example, A sells B a gun. The weapon might be used for good, or for evil. Therefore it is not inherently unlawful and may not be banned,<sup>3</sup> at least not in the free or libertarian society.<sup>4</sup> Possessing a firearm does not demonstrate that it will necessarily be used for aggression. But nuclear bombs (in some contexts anyway) can be used only for invasive purposes, and thus are inherently aggressive, and may therefore be prohibited (Block & Block, 2000). So the question is: is there a permissible use of this missile technology? Is there any legitimate reason to have an anti-aircraft missile system? Of course; we can all imagine many. So possessing such an implement is not inherently aggressive, and thus, the possessor cannot properly be treated as a per-se threat.

Imagine the following: An airport wants to locate somewhere but will only do so if it can persuade all the local neighborhood associations to adopt private contractual rules<sup>5</sup> to prohibit possession of anti-aircraft missiles. There may be holdouts, etc., but these can be dealt with (Block, 2009). So the airport just refuses to build in an area until they agree to ban such threats. Or maybe the airport has to buy a 5-square-mile territory. Or maybe they are always located out in the middle of the woods, and then offer train service to go from airport to the cities. Etc.

The case for legalizing guns is simple. If they are prohibited, only the law-abiding will give them up, not the criminals. Thus, the former will be weakened at the latter strengthened, something no man of good will can look upon positively. Yes, if all such weapons were magically to disappear, fewer people would be killed since other methods of mayhem are less efficient. In any case, such a law could not easily be enforced. Estimates are that there are practically as many pistols and rifles in private hands in the U.S. as there are inhabitants of this country.

But the same considerations, unfortunately for the case for legalizing anti-aircraft missiles do not apply. First of all, happily, there simply are not as many of them around, at least at present. Secondly, and as a result, they are not in use at all as much as ordinary firearms. Third, it might be alleged, they can do far more harm than a revolver, for example. What, then, is the case against prohibiting them? First and foremost, at least from the libertarian point of view, they are capable of

being confined to criminals, enemies, terrorists, etc. The, then, are not per se invasive weapons. They can be used for self-defense against malefactors. Second, the utilitarian argument against them is by no means as water-tight as its exponents imagine. They offer doomsday scenarios of felons shooting airplanes out of the sky from as much as five miles away. However, aircraft have been interdicted with far less sophisticated tools than that. The lowly razor blade was used in 911. Are we to ban it? Victims at the Boston Marathon were felled by the pressure cooker. Are chefs to be deprived of this implement of cookery? The underwear bomber<sup>6</sup> employed plastic explosives. Surely, no one can seriously contemplate forbidding plastic, or the ingredients of such heinous devices as nitro-glycerin, fertilizer, and household items such as citric acid, corn starch, baking soda, and vegetable oil.<sup>7</sup>

## Notes

<sup>1</sup>That it does not enumerate a right to have such weapons

<sup>2</sup>Hasnas (1995) points this out in his “The Myth of the Rule of Law.”

<sup>3</sup>For support of this contention see Baldwin, 2007; DeCoster, 2013; DeMar 2012; Kleck, 1991; LaRosa, 2013; Liberty Crier, 2012; Malcolm, 2012; Malnik, 2012; Masters, 2014; McMaken, 2015; Mirror, 2010; Rappoport, 2013A, 2013B; Reynolds, 2007; Vatic, 2012; Wenzel, 2013

<sup>4</sup>See on this Anderson and Hill, 1979; Benson, 1988, 1989a, 1989b, 1990, 1991, 1994, 1998; Block, 2003, 2004, 2005, 2006, 2007; Block and DiLorenzo, 2000, 2001; Caplan and Stringham, 2003, forthcoming 2008; Cowen, 1992, 1994; Cuzan, 1979; DiLorenzo and Block, 2001; Fielding, 1978; Friedman, 1989, 1994; Hasnas, 1995; Herbert, 1978; Holcombe, 2004; Hoppe, 1993, 2001A, 2001B, 2001C, 2003, 2008a, 2008b; Hummel, 2001; Kinsella, 2004; Leeson, 2007A, 2007B, 2007C, 2007D, 2007E; Leeson and Stringham, 2005; Long, undated, 1998, 2003, 2004; Molinari, 1977; Molyneux, 2007; Murphy, 2002, 2005; Nock, 1935; Oppenheimer, 1975; Osterfeld, 1989; R. and E. Perkins, 1971; Powell and Coyne, 2003; Powell and Wilson, 2008; Powell, Ford, and Nowrasteh, Forthcoming; Rothbard, 1973, 1978, 1982, 2004, 2008; Rummel, 2007; Sechrest, 1999; Smith, 1979; Sneed, 1977; Spencer, 1970, 1981; Spooner, 1870; Strasnick, 1979; Stringham, Edward, 1998-1999, 1999, 2002, 2003, 2005a, 2005b, 2006, 2007; M. and L. Tannehill, 1984; Tinsley, 1998-1999; Wiśniewski, 2014; Wollstein, 1969; Woolridge, 1970.

<sup>5</sup>These are called “restrictive covenants.” They have a bad press in the minds of many, since they were used along racial lines, but that has nothing to do with the present discussion. See on this: [http://scholar.google.ca/scholar?hl=en&q=restrictive+covenant&btnG=&as\\_sdt=1%2C5&as\\_sdt=1](http://scholar.google.ca/scholar?hl=en&q=restrictive+covenant&btnG=&as_sdt=1%2C5&as_sdt=1)

<sup>6</sup>Who happily failed in his despicable plans

<sup>7</sup><http://candles-soap.wonderhowto.com/how-to/make-bath-bomb-using-household-supplies-355779/>

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